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10 **UNITED STATES DISTRICT COURT**
 11 **SOUTHERN DISTRICT OF CALIFORNIA**

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 13 OUTERBRIDGE ACCESS
 14 ASSOCIATION, SUING ON BEHALF OF
 DIANE CROSS; and DIANE CROSS, An
 Individual,

16 Plaintiff,

17 vs.

18 MARIE CALLENDER'S PIE SHOPS,
 19 INC. d.b.a. MARIE CALLENDER'S #254;
 PACIFIC BAGELS, LLC d.b.a.
 20 BRUEGGARS BAGELS; COURTYARD
 HOLDINGS, LP; PSS PARTNERS, LLC;
 21 AND DOES 1 THROUGH 10, Inclusive,

22 Defendants.

Case No. 07-CV-2129 BTM (AJB)

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**NOTICE OF MOTION AND MOTION
 TO DISMISS**

[*Memorandum of Points And Authorities,
 Request for Judicial Notice and Appendix
 of Foreign Authorities filed concurrently
 herewith*]

Date: January 25, 2008

Time: 11:00 a.m.

Ctrm: 15

***Per Chambers, no oral argument unless
 required by the court.**

Complaint Filed: November 7, 2007

Trial Date: None Set

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1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 25, 2008, at 11:00 a.m., or as soon
 3 thereafter as the matter may be heard in the above-entitled court, located at 880 Front
 4 Street, Suite 4290, San Diego, California 92101, Courtroom 15, Defendant Marie
 5 Callender Pie Shops, Inc. dba Marie Callender's # 254 ("Marie Callender's") will and
 6 hereby does move the Court, pursuant to Federal Rule of Civil Procedure 12(b)(1) and
 7 12(b)(6), to dismiss the Complaint filed by Plaintiffs Outerbridge Access Association
 8 ("Outerbridge") and Diane Cross ("Cross" and, collectively with Outerbridge,
 9 "Plaintiffs") in its entirety for lack of subject matter jurisdiction and failure to state a
 10 claim. Marie Callender's further requests that the Court decline to exercise
 11 supplemental jurisdiction over Plaintiffs' state law claims.

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 13 This Motion is and will be based on the following grounds: (1) Plaintiffs lack
 14 standing to seek relief with respect to any alleged barriers not related to Cross'
 15 particular disability of non-mobility; (2) Plaintiff Outerbridge lacks organizational
 16 standing to bring this lawsuit against Defendants on behalf of itself or its members
 17 because it has not suffered any injury-in-fact; and (3) retaining jurisdiction over state
 18 law claims in ADA lawsuits is inappropriate because, among other reasons, it
 19 undermines California's ability to interpret its own laws.

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1 This Motion will be based on this Notice of Motion and Motion, the
2 accompanying Memorandum of Points and Authorities, the Request for Judicial Notice
3 filed concurrently herewith, the pleadings and papers on file herein, and such further
4 arguments and papers as may be presented to the Court before or during the hearing.

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6 Dated: November 29, 2007

CALL, JENSEN & FERRELL
A Professional Corporation
Scott J. Ferrell
Lisa A. Wegner

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9 By: /s/Lisa A. Wegner
10 Attorneys for Defendant Marie Callender's
11 Pie Shops, Inc. d.b.a. Marie Callender's #254
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